



GST updates

**Provisions of demand and recovery
contemplated under the model GST law**

Tax

July 2016

—————

KPMG.com/in



Provisions of demand and recovery contemplated under the model Goods and Services Tax (GST) law

Introduction



This note focusses on the provisions dealing with the demands and recovery provisions which are encapsulated under Chapter XIV. Our publication delved into the relevant sections in the aforesaid chapter and compared the same

with the corresponding provisions (if any) stipulated under the Finance Act, 1994 (Finance Act) and a VAT legislation [For the purposes of this report, we have referred to the Delhi Value Added Tax Act, 2004 (Delhi VAT Act) as a sample].

Relevant provisions:



Model GST law:

Section 51A	Section 51B	Section 51C
<ul style="list-style-type: none"> • Applicable in case of non-payment or short payment of tax without fraud or willful-misstatement. • Proper officer is to issue a Show Cause Notice (SCN). • Mere statement containing the non-payment or short payment can be served for subsequent periods, only if the grounds raised are identical to the ones raised in the previous year. • If the taxpayer pays complete tax before the issuance of SCN, then the proper officer shall not serve issue a SCN. • Proper officer is to determine the amount of tax, including any penalty or interest, after considering the representation made by the taxpayer. • Proper officer is to issue the order within three years from the due date or the actual date of filing of return. 	<ul style="list-style-type: none"> • Applicable in case of non-payment or short payment of tax with fraud or willful-misstatement. • Proper officer to issue a SCN. • Mere statement containing the non-payment or short payment can be served for subsequent periods, only if the grounds raised are identical to the ones raised in the previous year. • Person pays the tax along with interest and penalty at the rate of 15 per cent. Then, no SCN is to be issued. • In case the taxpayer pays tax, interest and 25 per cent of the penalty within 30 days of communication of notice, then, the proceedings are deemed to be concluded. • Proper officer has to issue the order within five years from the due date or actual date of filing of return. • In case the person pays tax, interest and 50 per cent penalty, then the proceedings are to be concluded. 	<ul style="list-style-type: none"> • Stipulates general provisions relating to demand of tax. • If the service of SCN or issuance of order is stayed by a court or tribunal, then, a period of such stay is excluded from computing the limitation of three/five years. • Demand cannot be confirmed on grounds other than the grounds specified in the SCN. • Proper officer shall provide personal hearing. Also, if sufficient cause is shown, the proper officer may adjourn the hearings. • Interest has to be paid whether or not stated in the order. • If no order is passed within three/ five years, then, the adjudication proceedings shall be deemed to be concluded. • Time taken in matters on similar issues, pending between different parties, shall also be excluded in computing the limitation of three/ five years.

Section 52 of the model GST law deals with a situation where the tax (i.e. GST) has been collected but has not been deposited with the appropriate government. The section provides that a notice has to be issued to the taxpayer and an opportunity of personal hearing should also be given. Further, the provision states that the proper officer shall pass the

order within one year from the date of issue of the notice. Additionally, it provides for imposition of a penalty, equivalent to the amount specified in the notice, as well as levy of interest.

Provisions similar to the above in the Finance Act and Delhi VAT Act:

Finance Act	
Section 73 (1) - non-payment of tax without element of fraud, suppression, etc.	Section 73 (1) proviso - non-payment of tax due to fraud, suppression, etc.
<ul style="list-style-type: none"> • Central Excise Officer to issue SCN within 30 months. • If the taxpayer pays tax with interest on his/her own ascertainment, then no SCN is issued. • Penalty not exceeding 10 per cent. • If tax and interest is paid within 30 days of the notice, then no penalty. • If tax and interest is paid within 30 days of receipt of the order, then 25 per cent of the penalty stated in the order will be payable. 	<ul style="list-style-type: none"> • Central Excise Officer to issue SCN within five years. • Penalty shall be equivalent to the amount of service tax payable. • If tax and interest is paid within 30 days of the notice, then penalty imposable will be 15 per cent of tax. • If tax and interest is paid within 30 days of the order, then penalty imposable will be 25 per cent of tax.

Mere statement containing the non-payment or short payment can be served within 30 months, subsequent to the issuance of any notice(s), only if the grounds raised are identical to the ones raised in the previous year.

Section 32 of the Delhi VAT Act states that if a taxpayer has not furnished his/her returns or has furnished incomplete returns, then the Commissioner may assess or reassess the amount of net tax due. Section 34 of the Delhi VAT Act provides that the assessment or reassessment for

non-payment shall be done within four years which can be extended to six years where such non-payment is on account of an act of concealment or omission. Further, the taxpayer can file an objection against the assessment order passed in accordance with Section 74 of the Delhi VAT Act.





On the basis of the provisions stated in the foregoing paragraphs, we have discussed a few issues and lacunas in the model GST law which might initiate unnecessary litigation on the legal principles which have already been established by a plethora of decisions.

- i. It may be noted that Section 51A and 51B of the GST model law provides for completion of assessment/issue of the order by the proper officer within three/five years as the case may be from the date of filing the annual return. However, no time limit has been prescribed for issuance of a SCN for initiating the litigation (or demand). This means that no minimum time gap needs to be maintained between issuance of a SCN and assessment order. Given the casual nature of functioning of the tax departments, they are likely to issue the SCN during the last few months of the aforementioned limitation period, thereby allowing very little or no time to the taxpayer to file his/her reply. This might not only lead to unnecessary litigation but also the whole objective of completing the assessment within a given time frame could get vitiated.
- ii. The limitation period for assessment is three/five years (as the case may be) from the due date of the annual return. For better understanding of the actual limitation period, we have explained the same with the following example.
 - Tax period under consideration Financial Year 2015-16 (i.e. April 2015 - March 2016)
 - Due date to file the annual return – 31 December 2016
 - Limitation to pass order in respect of the aforesaid tax period shall be 31 December 2019 and if the extended period is invoked, then 31 December 2021.

Therefore, effective limitation is starting from April 2015 and ending on December 2019 or 2021 (i.e. four years nine months or six years nine months as the case may be).

Thus, the model GST law has proposed the limitation period of four years nine months in cases where non-payment is without fraud, suppression, etc. and six years nine months where the payment is due to fraud, suppression, etc. This may be prejudicial in the interest of the taxpayers.

iii. Here, it is pertinent to discuss that the model GST law has also incorporated certain circumstances or situations which would be excluded from the limitation period of three/five years. These are:

- a. If the service of a SCN is stayed by the court or tribunal
- b. If the issuance of the order is stayed by the court or tribunal
- c. If a different proceeding involving a similar issue has been decided against the Revenue; and Revenue appeal against the same before the relevant appellate forum is pending

It may be noted that the third exception (which seems to be a continuation of the concept of disputes being put in the 'call book' in a limited form) is unreasonable and could become a huge impediment in speedy disposal of cases. The provisions do not give clarity as to who would determine whether the issue is similar or not and in case there are multiple issues, then would the officer decide the case with respect to other issues and if so, what will be the effect of limitation in such a scenario. Thus, these provisions in the model GST law promote pendency in litigation and has left open issues in this aspect.

- iv. (The model GST law has introduced a section stating that the order cannot travel beyond the allegations or grounds raised in the notice (SCN). This is a welcome change since under the present legal scenario this principle has been established only through decisions of various judicial fora.
- v. Additionally, it may be noted that the model GST law does not have a specific section or provision providing for imposition of penalty in cases where there is short payment of tax due to fraud. Simply put, the model GST law does not have a corresponding provision for Section 78 of the Finance Act. Even though, Section 51B(1) mentions that penalty imposed would be equivalent to the tax demand, but in the absence of a specific section levying the penalty, there may be challenges towards imposition of such penalty.

Contact us

Sachin Menon
Partner and Head

Indirect Tax

T: +91 22 3090 2682

E: sachinmenon@kpmg.com

KPMG.com/in

kpmg.com/socialmedia



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2016 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

Printed in India. (016_POV0717)